No. 92-1771

In the Supreme Court of the United States

OCTOBER TERM, 1992

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF NEW BANK OF NEW ENGLAND, N.A., PETITIONER

v.

CORMAN CONSTRUCTION, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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The Acting Solicitor General, on behalf of the United States, requests the Court to dismiss the petition in this case, because it was not authorized by the Solicitor General.[1]

Under 28 U.S.C. 518(a), "the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court * * * in which the United States is interested." By regulation, the Attorney General has delegated to the Solicitor General the responsibility for "[c]onducting, or assigning and

[1] The Federal Deposit Insurance Corporation agrees with the views expressed in this memorandum.

supervising, all Supreme Court cases, including appeals, petitions for and in opposition to certiorari, briefs and arguments, and * * * settlement thereof." 28 C.F.R. 0.20(a). See generally *United States* v. *Providence Journal Co.*, 485 U.S. 693, 698-700 (1988).

Because the Federal Deposit Insurance Corporation is the petitioner, this case is one "in which the United States is interested" for purposes of 28 U.S.C. 518(a).[2] The Solicitor General did not authorize filing of the petition in this case. Accordingly, the Court lacks jurisdiction over the petition and, in accordance with the Court's past practice, the petition should be dismissed. See *Providence Journal Co.*, 485 U.S. at 708.

It is therefore respectfully submitted that the petition for a writ of certiorari should be dismissed for want of jurisdiction.

WILLIAM C. BRYSON
Acting Solicitor General

ALFRED J.T. BYRNE
General Counsel
Federal Deposit Insurance Corporation

MAY 1993

[2] The management of the FDIC is vested in a Board of Directors consisting of five members, one of whom is the Comptroller of the Currency, one of whom is the Director of the Office of Thrift Supervision, and three of whom are appointed by the President, by and with the advice and consent of the Senate. 12 U.S.C. 1812 (Supp. III 1991). The Comptroller of the Currency also is appointed by the President, by and with the advice and consent of the Senate. 12 U.S.C. 2. Finally, the Director of the Office of Thrift Supervision is "subject to the general oversight of the Secretary of the Treasury," 12 U.S.C. 1462a(b)(1) (Supp. III 1991), and appointed by the President, by and with the advice and consent of the Senate, 12 U.S.C. 1462a(c)(1) (Supp. III 1991).